

Section-by-Section, HR 3320 - Nov 10, 1999

**SECTION-BY-SECTION ANALYSIS OF
"CONSUMER'S RIGHT TO FINANCIAL PRIVACY ACT"
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Sec. 1 Short Title. This Section provides that this Act may be cited as the "Consumer's Right to Financial Privacy Act".

Sec. 2. Amendment. This Section amends Title V of the Gramm-Leach-Bliley Act to read as follows:

**Title V - Privacy of Consumer Information
Subtitle A- Disclosure of Nonpublic Personal Information**

Sec. 501. Protection of Nonpublic Personal Information.

Directs Federal functional regulators and insurance regulators to establish standards for ensuring the security and confidentiality of nonpublic personal information maintained by financial institutions, protect against any anticipated threats or hazards to the security and integrity of such records, and protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any consumer.

Sec. 502. Obligations with Respect to Personal Information.

Generally requires notice to consumers of the right to direct their financial institution not to disclose or make an unrelated use of nonpublic personal information, unless such institution has provided consumers with the notice required under Section 503.

The Section establishes an "Opt-In" for information transfers, which prohibits financial institutions from making available any nonpublic personal information to any affiliate or other person that is not an employee or agent of the institution, unless the consumer to whom the information pertains has affirmatively consented to the transfer of such information and has not withdrawn the consent.

The Section provides flexibility with respect to the form that the "Opt-In" takes, allowing the consumer, for example, to opt-in with respect to third parties but not with respect to affiliates, or to opt out with respect to both affiliates and third parties. The Section also prohibits a financial institution from denying service to consumers for refusing to "Opt-In" to having their information transferred to affiliates or third parties.

The Section provides consumers with access to nonpublic personal information that is being collected about them by a financial institution and disclosed to any other person (other than an agent or employee) and gives consumers the opportunity to dispute the accuracy of any such information and have any inaccuracies corrected.

The Section also prohibits disclosure by a financial institution of consumer account numbers or access codes to third parties for marketing purposes.

The Section contains a series of eight general exemptions from the notice and opt-out requirements, including for disclosures necessary to effect, administer, or enforce a transaction or a related transaction,

to respond to judicial process or provide information to properly authorized law enforcement agencies, to provide information to consumer reporting agencies, to provide information in connection with securitization or reinsurance activities.

Sec. 503. Notice Concerning Disclosing Information.

Requires the Federal Banking agencies, NCUA, Treasury, SEC, FTC, and State insurance regulators to prescribe regulations to carry out the purposes of the notice and disclosure requirements. Such regulations may include exemptions that are deemed consistent with the purposes of the Subtitle, and must be issued within 6 months.

Sec. 504. Enforcement.

Mandates enforcement of the subtitle's provisions by the Federal functional regulators, State insurance authorities, and the FTC, according to their respective jurisdictions, and in conjunction with the states ability to bring action in U.S. District Court.

Sec. 505. Fair Credit Reporting Act Amendment.

Authorizes Federal regulators to examine financial institutions for violations of the Fair Credit Reporting Act in the absence of a specific complaint. Requires Federal banking regulators and the FTC to prescribe regulations implementing the FCRA for the institutions within their respective jurisdictions. This Section also contains an FCRA savings clause to clarify that nothing in this Subtitle, except for the FCRA amendments made by the Subtitle, shall be construed as modifying, limiting, or superseding the FCRA.

Sec. 506. Relation to State Laws.

Explicitly states that nothing in this subtitle will preempt stronger state privacy protections.

Sec. 507. Definitions.

Defines various terms used in the Subtitle, including "financial institution," "nonpublic personal information," "affiliate", and "unrelated use."

Sec. 508. Effective Date.

The provision becomes effective six months after enactment, except to the extent that a later date is specified under the rules prescribed under the Subtitle.

Subtitle B - Fraudulent Access to Financial Information

Sec. 521. Privacy Protection for Consumer Information of Financial Institutions.

The provision makes it illegal for any person to obtain or attempt to obtain or cause to be disclosed or attempt to cause to be disclosed to any person, consumer information of a financial institution by making false, fictitious, or fraudulent statements or representations (i.e., the practice popularly known as "pretexting"). Under the subtitle, it would also be illegal to request a person to obtain customer information of a financial institution, knowing that the person would obtain such information using pretexting.

The provision would not apply to law enforcement agencies in connection with the performance of their official duties. It would also not apply to financial institutions for testing their security procedures or systems, investigating allegations of misconduct or negligence on the part of their employees or agents, or recovering fraudulently obtained information. The provision would also not apply to insurance institutions for investigations of insurance fraud.

Sec. 522. Administrative Enforcement.

This Section provides that compliance with the subtitle shall be enforced by the Federal Trade Commission, which is required to notify the SEC, the federal banking agencies, or the state insurance regulators whenever they initiate an investigation into violations by entities subject to their respective jurisdictions. In addition, the State Attorneys General are also given authority to enforce compliance with the subtitle.

Sec. 523. Criminal Penalties.

This Section provides for criminal penalties for knowing and willful violations of the Subtitle, including imprisonment for not more than five years and civil fines, and enhanced penalties for aggravated cases involving pretexting in conjunction with a pattern of other illegal activity involving substantial amounts of money of imprisonment for not more than ten years and increased civil penalties.

Sec. 524. Relation to State Laws.

This Section provides that the Subtitle shall not be construed as preempting State laws, regulations, or interpretations which provide consumers greater protections.

Sec. 525. Agency Guidance.

This Section directs the various financial regulators to review their existing regulations and guidelines and prescribe such revisions as necessary to ensure that the financial institutions within their respective jurisdictions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect violations.

Sec. 526. Reports.

This Section directs the GAO, in consultation with the FTC and the various federal and state financial regulators, to submit a report to Congress on the efficacy and adequacy of the remedies provided in this subtitle and any recommendations for additional reforms. The Section also directs the FTC and the Attorney General to submit to Congress an annual report on the number and disposition of all enforcement actions taken pursuant to this Subtitle.

Sec. 527. Definitions.

This Section defines various terms used in this Subtitle, including "customer", "customer information of a financial institution", "document", and "financial institution".